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No. 88-1294

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

PRAMOD K. SHARMA,
Petitioner,

v.

LOCKHEED ENGINEERING and
MANAGEMENT SERVICES COMPANY, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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1. In an effort to persuade the Court that the questions raised in Mr. Sharma's Petition are moot, respondent Lockheed has represented to the Court that the *only* count of Mr. Sharma's complaint raised before the Fourth Circuit was his breach of contract/42 U.S.C. § 1981 count (Third Cause of Action) and that that count is barred by Maryland's three-year statute of limitations. Respondent's Brief in Opposition ("Opp.") at 5. This representation is *completely false.* In fact, the Fourth Circuit explicitly recognized that Mr. Sharma's contention that he was improperly denied the opportunity to obtain discovery applied to *both* his Title VII

and § 1981 causes of action and that only Mr. Sharma's claim for intentional infliction of emotional distress had not been appealed to the court. Pet. App. 6a, 3a.

Moreover, the Fourth Circuit found *only* Mr. Sharma's state breach of contract contention to be barred by Maryland's statute of limitations; the Court dismissed his § 1981 and Title VII claims on summary judgment grounds due to Mr. Sharma's alleged failure to factually support his discrimination claims. And even assuming that the Maryland limitations statute would apply to the § 1981 claims—a finding the court below never made—*in no event* would that statute bar Mr. Sharma's Title VII claim. Indeed, there can be no dispute on this record that the Title VII claim was timely filed within 90 days of Mr. Sharma's receipt of a right to sue letter from the EEOC. Ct. App. J.A. at 19, 8-18.

Thus, once Lockheed's grossly unfounded jurisdictional argument is set aside, the questions raised in Mr. Sharma's Petition are plainly not moot, particularly in light of the acknowledgment by the court below that had Mr. Sharma been given the opportunity to depose Lockheed's president, "evidence might have been adduced" to support Mr. Sharma's Title VII claim. Pet. App. 7a.

2. Lockheed also misstates the record on significant points affecting the questions presented. For example, Lockheed characterizes Adrienne Allen's deposition testimony as stating that she was familiar with Lockheed's relocation policies and that Lockheed had not purchased any employee's home upon transfer. Opp. at 6. Yet, the court below specifically found that Ms. Allen "stated that she was not familiar with personnel procedures in Houston [the facility from which Mr. Sharma was transferred] and that she did not know if Lockheed had ever paid for an employee's house when he was transferred from one facility to another." Pet. App. 4a-5a. Lockheed also asserts that Mr. Sharma "was afforded every rea-

sonable opportunity to obtain facts to support his claim." Opp. at 5. Yet, as explained in Mr. Sharma's Petition, the district court not only denied Mr. Sharma the opportunity to take the deposition of Lockheed's president, it also denied Mr. Sharma additional time to depose, among others, George Brown, his supervisor at the Maryland facility. Pet. at 6, 11, 15.

3. In an effort to justify these denials, Lockheed's counsel simply asserts, without citing any support in the record, that "Lockheed has never purchased the home of any similarly situated employee." Opp. at 6. But this, of course, is the central factual question as to which Mr. Sharma was denied fair and equal discovery rights and upon which summary judgment was entered against him. Counsel's after-the-fact representations cannot resolve that factual question, cannot cure the denial of discovery, and cannot justify the entry of summary judgment.

For the reasons set forth here and in Mr. Sharma's Petition, this Court should grant the writ and reverse the decision below.

Respectfully submitted,

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